

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

WAYNE BERRY, a Hawaii citizen,) CIVIL NO. CV03 00385
Plaintiff,) SOM-LEK
) (Copyright)
vs.)
HAWAIIAN EXPRESS SERVICE,) DEPOSITION OF
INC., a California corporation; H.E.S.) MARK DILLON
TRANSPORTATION SERVICES,) DATE TAKEN: 12-23-03
INC., a California corporation; CALIFORNIA) VOLUME 2
PACIFIC CONSOLIDATORS,) Pages 172 - 387
INC., a California corporation; JEFFREY P.)
GRAHAM and PETER SCHAUL,)
California citizens; MARK)
DILLON and TERESA NOA,)
BRIAN CHRISTENSEN, Hawaii)
citizens; FLEMING)
COMPANIES, INC., an)
Oklahoma corporation;)
C & S LOGISTICS OF HAWAII,)
LLC, a Delaware LLC;)
C & S WHOLESALE GROCERS,)
INC., a Vermont)
corporation; C & S)
ACQUISITIONS, LLC;)
FOODLAND SUPER MARKET,)
LIMITED, a Hawaii)
corporation; HAWAII)
TRANSFER COMPANY, LIMITED,)
a Hawaii corporation, DOE)
INDIVIDUALS 1-350; DOE)
PARTNERSHIPS, CORPORATIONS)
and OTHER DOE ENTITIES)
1-20,)
Defendants.)

1 Q Now, is it fair to say that there is --
2 that you still have a copy of
3 AuxiliaryLogisticsData.mdb?

4 A I'm not sure I have a copy of it.

5 Q How would you find out if you did or did
6 not have one?

7 A I would have to look for it.

8 Q Where would you look?

9 A Like on the server or my computer.

10 Q Either the server or your computer?

11 A Yeah.

12 Q So what about the program that's called
13 "OriginalLogisticsData.mdb," do you have a copy of
14 that?

15 A No. That's Mr. Berry's software.

16 Q And you didn't keep a copy of that
17 subsequent to the time that Guidance did its work
18 at your office?

19 A We did not.

20 Q Now, you don't recall how you created
21 Auxiliary Logistics Data, and you don't recall if
22 you have a copy of it. Is there any backup file
23 that might exist somewhere that would have a copy
24 of this program if we had to get our hands on one?

25 MR. SMITH: You mean, other than

1 that contained nothing created by Mr. Berry.

2 MR. HOSODA: Can we get another break
3 soon?

4 MR. HOGAN: Yes, we can do one right now,
5 and then I'm going to try to wrap it up.

6 (Brief recess.)

7 Q (By Mr. Hogan) Let me just do a quick
8 question. We're back on the record, Mr. Dillon.

9 The June 2000 copy that you had that you
10 then used after the jury verdict, and you call it
11 the OriginalLogisticsDatabase.ddb -- mdb?

12 MR. SMITH: I'll object. It misstates
13 his testimony.

14 THE WITNESS: Let's just say -- counsel
15 should say, but we had agreed to say the
16 OriginalLogisticsData.mdb.

17 Q (By Mr. Hogan) That's what you call it in
18 the queries; is that a fair statement?
19 OriginalLogisticsData.mdb?

20 A Yes.

21 Q I just want to make sure we're talking
22 about the same thing. Do you know whether a copy
23 of that exists anywhere that we can get our hands
24 on it?

25 A Guidance software.

Hogan Dec Exhibit 5

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1 Q And you believe there is a copy of that
2 on the Guidance images?

3 A Yes, I do.

4 Q Why do you believe that?

5 Before I ask you the question, it's going
6 to be exactly the way it was when you went out and
7 looked on the server and found that as the most,
8 the most historically accurate representation of
9 Mr. Berry's database.

10 A Yes. I believe --

11 Q What I'm saying is --

12 A You want to know what?

13 Q Here's what I'm getting at. You've
14 testified that after the trial jury verdict, there
15 were discussions and a decision was made to go back
16 to what you claimed was originally licensed. Am I
17 okay so far?

18 A Yes.

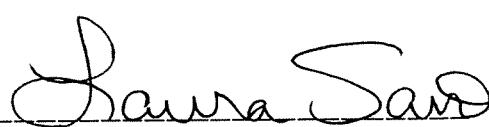
19 Q And you didn't have the exact media from
20 the earlier one because you had a server crash, but
21 you had one that you believe you created sometime
22 in 2000?

23 A I was not lacking the original file sans
24 any changes made by myself because of a server
25 crash, but because by losing track of its

1 C E R T I F I C A T E
2
3 STATE OF HAWAII)
4) ss.
5)
6
7 I, LAURA SAVO, a Notary Public in and for
8 the State of Hawaii, do hereby certify:
9
10 That prior to being examined, the witness
11 herein, MARK DILLON, was sworn by me to testify to
12 the truth, the whole truth and nothing but the
13 truth;
14
15 That the foregoing deposition was taken
16 down by me in machine shorthand at the time and
17 place herein stated, and was thereafter reduced to
18 typewriting under my supervision;
19
20 That the foregoing is a full, true
21 and correct transcript of said deposition;
22
23 That after said deposition was reduced to
24 typewriting, the witness, in accordance with Rule
25 30(e) of the Hawaii Rules of Civil Procedure, was
duly informed of the right to make such corrections
as might be necessary to render the same true and
correct.

I further certify that I am not of
counsel or attorney for any of the parties to this
case, nor in any way interested in the outcome
hereof, and that I am not related to any of the
parties hereto.

Witness my hand and seal this 9th day of
January, 2004.

21 
22 LAURA SAVO, RPR, CSR NO. 347
23 Notary Public, State of Hawaii
24 My Commission Expires: 11/28/2005
25